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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-311

GENERAL ADJUSTMENT BUREAU, INC. and PROPERTY LOSS RESEARCH BUREAU,
Petitioners,

VERSUS

MAC ADJUSTMENT, INC., and B. J. GOSTING,
Respondents.

PETITIONERS' REPLY BRIEF ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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October 1, 1979

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Petitioners hereby respectfully submit this reply brief addressing the issues raised in Respondents' "Response to Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit."

Pursuant to Rule 24 (4) of the Rules of the United States Supreme Court, this brief will focus solely on the issues raised by Respondents' Response and will not attempt to deal once again with issues set forth in Petitioners' original brief.

REPLY TO RESPONDENTS' REASONS FOR DENYING THE WRIT

RESPONDENTS' REASON NO. 1: SUMMARY JUDGMENT SHOULD ONLY BE GRANTED WHERE THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT AND THE MOVING PARTY IS ENTITLED TO A JUDGMENT AS A MATTER OF LAW.

Petitioners do not take issue with this statement of well settled law. Indeed, the Tenth Circuit's opinion did not focus upon the existence of controverted facts so as to require reversal of a summary judgment. Rather, its opinion erroneously assumed that Respondents did not have an adequate opportunity to present all the evidence they had relating to the jurisdictional issue before the Court, and that if given further opportunity, would submit additional evidence. That simply is not the case. Respondents had an unlimited opportunity to present any and all evidence which would have shown the required nexus with interstate commerce. Indeed, at the close of Mr. Gosting's testimony the trial court asked Respondents if they desired to submit anything further. Respondents replied that there was no other evidence which could be submitted.

This is not a case in which there are controverted facts such as to prevent the granting of a summary judgment. Neither Petitioners nor Respondents set forth any controverted facts. This is a case in which Respondents had an unlimited, unfettered opportunity to present any and all evidence which existed that would show the required nexus

with interstate commerce. This is a case where Respondents failed and refused to meet the burden the law placed upon them.

Petitioners do not dispute the principle of law set forth in Respondents' first reason for denying the writ. It simply is inapplicable and does not constitute the basis of the decision of the United States Court of Appeals for the Tenth Circuit.

RESPONDENTS' REASON NO. 2: A REVIEW ON WRIT OF CERTIORARI IS NOT A MATTER OF RIGHT, BUT OF SOUND JUDICIAL DISCRETION, AND WILL BE GRANTED ONLY WHERE THERE ARE SPECIAL AND IMPORTANT REASONS THEREFOR.

Petitioners do not dispute Respondents' second reason for denying the writ.

CONCLUSION

Petitioners respectfully submit that the proper focus of the Court should be upon the error of the Tenth Circuit in assuming that there would be additional evidence submitted at a subsequent hearing and the further error in finding that an evidentiary hearing of the type held by the trial court was improper.

To allow this decision of the United States Court of Appeals for the Tenth Circuit to stand, when taken in light of the reasons therefore, will result in a mandatory trial in all antitrust cases simply because a complaint is filed. This

result would reek havoc upon the orderly and efficient administration of justice.

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